



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0651]

RIN 1625-AA00

Safety Zone; Navy Underwater Detonation (UNDET) Exercises, GU

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing two recurring safety zones for navigable waters of Apra Outer Harbor and Piti, Guam. The safety zones will encompass sites designated for U.S. Navy underwater detonation (UNDET) exercises. The Coast Guard believes this safety zone regulation is necessary to protect the public and exercise participants within the affected area from possible safety hazards associated with these exercises. These safety zones will impact a small designated area of navigable waters in Apra Harbor and Piti during periods of times, many of which are of short duration, on days requested by the Navy for UNDET exercises. With the exception of exercise participants, entry of vessels or persons into the zone is prohibited unless specifically authorized by the Captain of the Port Guam.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0651 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Robin Branch, Sector Guam, U.S. Coast Guard; telephone (671) 355-4835, email wwmgum@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

U.S. Navy UNDET exercises occur multiple times throughout the year to train and prepare personnel for operational missions. We have established safety zones for these Navy UNDETs in past years through a temporary final rulemaking for each exercise. For all subsequent exercises, we propose to establish recurring safety zones through this regulation to safeguard the public and exercise participants within the affected area from possible safety hazards associated with the exercises.

In response, on February 9, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Navy Underwater Detonation (UNDET) Exercise, Apra Outer Harbor, GU (83 FR 5751-5753). In the NPRM, we stated the purpose and need for the safety zone, and invited comments on our proposed regulatory action related to these safety zones. During the comment period that ended March 26, 2018, we received 2 comments in support of the proposed rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Guam (COTP) has determined that potential hazards associated with the UNDET exercises

will be a safety concern for anyone within a 700 yard radius around the two locations with the exception of exercise participants. The purpose of these safety zones is to protect the public and exercise participants from possible safety hazards associated with the exercises.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received two comments on our NPRM published February 9, 2018. Both comments supported the rule, and proposed no changes. The only change made will be to the title of the rule. The original title from the proposed rule in the NPRM was “Safety Zone; Navy Underwater Detonation (UNDET) Exercise, Apra Outer Harbor, GU”. The title will be changed to “Safety Zone; Navy Underwater Detonation (UNDET) Exercises, GU” which better reflects the rule. There are no changes in the regulatory text of this rule from the NPRM.

The COTP proposed to establish two recurring safety zones for certain periods of time, many of which are of short duration, on days requested by the Navy for UNDET exercises. The safety zones will cover all navigable waters within a 700 yard radius above and below the surface for the Apra Outer Harbor UNDET site and a 700 yard radius above and below the surface for the UNDET Piti site. The duration of the safety zones is intended to protect personnel, vessels, and the marine environment in these navigable waters during the UNDET exercise. With the exception of exercise participants, no vessel or person will be permitted to enter the safety zones without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the safety zones. Vessel traffic will be able to safely transit around these safety zones, which will impact a small designated area of waters off of Piti, Guam, and in Apra Outer Harbor for certain periods of time, many of which are of short duration, on days requested by the Navy for UNDET exercises. The UNDET exercises occur approximately 10 times a year, although additional exercises may be required based on Navy training needs. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the safety zones and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small

entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of

government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing two recurring safety zones for

periods of time, many of which are of short duration, on days requested by the Navy for UNDET exercises that will prohibit entry within 700 yards radius above and below the surface for the Apra Outer Harbor UNDET site and a 700 yard radius above and below the surface for the Piti UNDET site. It is categorically excluded from further review under paragraph L[37] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.1402 to read as follows:

§ 165.1402 Safety Zone; Navy Underwater Detonation (UNDET) Exercises, GU.

(a) Location. The following areas, within the Guam Captain of the Port (COTP) Zone (See 33 CFR 3.70-15), from the surface of the water to the ocean floor, are safety zones:

(1) Apra Outer Harbor, Guam. All waters above and below the surface bounded by a circle with a 700 yard radius centered at 13 degrees 27 minutes 42 seconds North Latitude and 144 degrees 38 minutes 30 seconds East Longitude, (NAD 1983).

(2) Piti, Guam. All waters above and below the surface bounded by a circle with a 700 yard radius centered at 13 degrees 29 minutes 03 seconds North Latitude and 144 degrees 40 minutes 03 seconds East Longitude, (NAD 1983).

(b) Enforcement periods. This section will be enforced for designated periods of time, many of which are of short duration, on days requested by the Navy for purpose of UNDET exercises.

(c) Regulations. The general regulations governing safety zones contained in § 165.23 apply. With the exception of exercise participants, no vessels may enter or transit safety zones in paragraph (a)(1) of this section and no persons in the water may enter or transit the safety zone in paragraph (a)(2) of this section unless authorized by the COTP or a designated representative thereof.

(d) Enforcement. Any Coast Guard commissioned, warrant, or petty officer, and any other COTP representative permitted by law, may enforce these safety zones.

Dated: April 27, 2018.

Christopher M. Chase,
Captain, U.S. Coast Guard,
Captain of the Port, Guam.

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